

REMARKS

Applicant has now had an opportunity to carefully consider the Examiner's comments set forth in the Final Office Action of December 1, 2006. In the Final Office Action, claims 1-34 are pending with claims 1 and 18 being independent claims. By this amendment, Applicant has amended claims 1 and 18. Applicant believes that all of the amendments do not introduce new matter. Review and reconsideration of the claims are respectfully requested.

Claims 1-34 remain in this application and are believed to be in proper condition for allowance.

A. Examiner's response regarding the simultaneous delivery of fluid from both the nasal prongs and the internal cavity of the nasal mask

In the Examiner's Final Office Action, Examiner indicates that Applicant's arguments are unpersuasive because they are not commensurate with the scope of Applicant's claims. Specifically, Applicant argued in his response dated September 14, 2006 that the nasal mask assembly of the present invention simultaneously delivers fluid to a patient from both the nasal cup and the nasal prongs. The Examiner responded that Applicant did not claim a "nasal mask with nasal prongs that can *simultaneously* deliver breathable liquid from both the internal cavity of the nasal mask and the nasal prongs to the patient." Final Office Action, ¶33 (Examiner's emphasis). The Examiner continues in stating that because "Applicant has not amended the claims to disclose an invention of a breathing system capable of delivering breathable gas from both the mask and the nasal prongs," the final rejection of all pending claims is proper.

Although Applicant believes that such a limitation is inherent in the claims as previously presented due to the fact that the nasal prongs do not seal a patient's nostriles, Applicant has amended independent claims 1 and 18 to more clearly describe the invention. Applicant

amended Claim 1 to include the text, "said nasal cup and said nasal prongs adapted to simultaneously deliver the fluid from said internal cavity of said nasal cup and said nasal prongs to the patient." Similarly, Applicant amended claim 18 to include text that Applicant's invention simultaneously delivers fluid to the patient's nostrils from both the nasal cup and the nasal prongs (see step (f)). Accordingly, Applicant respectfully asserts that by amending independent claims 1 and 18 as suggested by the Examiner, the pending claims are in proper condition for allowance.

B. Rejection under 35 U.S.C. 103(a)

Pursuant to 35 U.S.C. 103(a), the Examiner rejected claims 1-3, 5, 8, 12-20, 22, 25, and 29-34 as being unpatentable over Bordewick, et al. (U.S. Patent 6,418,928) in view of Sullivan (U.S. Patent 4,944,310); claims 4 and 21 as being unpatentable over Bordewick in view of Sullivan as applied to claims 3 and 20 above, and further in view of Belfer (U.S. Patent 5,918,598); claims 6, 7, and 22-24 as being unpatentable over Bordewick in view of Sullivan as applied to claims 5 and 18, and further in view of Bartos (U.S. Patent 4,354,488); and claims 9-11 and 26-28 as being unpatentable over Bordewick in view of Sullivan as applied to claims 1 and 18, and further in view of Bohn, et al (U.S. Patent 6,860,268).

In response to these rejections, Applicant respectfully contends that none of these prior art patents, either alone or in combination, disclose, teach or suggest the delivery of a breathable fluid to a patient through both a nasal cup and nasal prongs as set forth in Applicant's amended independent claims 1 and 18. As discussed in detail in Applicant's response of September 14, 2006, Bordewick, Belfer, and Bohn disclose respiratory masks and a ventilator mask which require the sealing of a patient's airway in order to function properly. In contrast, Sullivan and Bartos disclose breathing apparatuses which do not require the sealing of a patient's airway.

Therefore, there is no motivation to combine Bordewick, Belfer, or Bohn with either Sullivan or Bartos. In fact, such a combination would render Bordewick, Belfer, and Bohn unusable as respirator or ventilator devices, and render Sullivan and Bartos unusable as breathing devices.

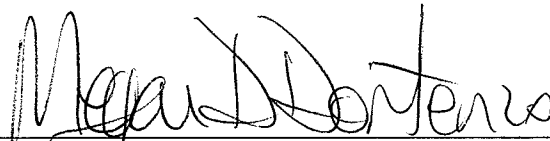
In further response, Applicant has amended independent claims 1 and 18 per the Examiner's suggested language to more clearly claim the present invention. In particular, both of the independent claims are amended to include language directed to the simultaneous delivery of fluid to the patient from the nasal cup and the nasal prongs. As noted above, Bordewick, Belfer and Bohn require a mask to seal a patient's airway which teaches away from combining such prior art with Sullivan and Bartos. Applicant's invention, as well as that of Sullivan and Bartos, would not function as intended if a patient's airway is sealed. Therefore, Applicant respectfully asserts that none of the prior art patents, alone or in combination, disclose, teach or suggest a nasal mask that simultaneously delivers fluid to a patient from a nasal cup and nasal prongs.

For the above mentioned reasons and the arguments advanced in Applicant's September 14, 2006 response, Applicant respectfully asserts that amended independent claims 1 and 18 are in proper condition for allowance. In addition, it is well established in patent law that allowance of a parent or base claim as patentable, normally results in allowance of a claim dependent upon that parent claim. *See* DONALD S. CHISUM, CHISUM ON PATENTS §7.04[2]. Thus, Applicant respectfully contends that claims 2-17 and 19-34 also are in proper condition for allowance because these claims depend, directly or indirectly, from an allowable independent claim. Applicant respectfully requests that Examiner to withdraw the rejections and allow these claims to pass to issuance.

B. Conclusion

All of the newly stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot in this response and Applicant's response of September 14, 2006. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections, and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Final Office Action and, as such, Applicant respectfully submits that all pending claims, claims 1-34, are in proper condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone or email the undersigned at the numbers provided.

Respectfully submitted,



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